

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No.

MYRNA HARRIS

individually and on behalf of all others
similarly situated

Plaintiff,

v.

DAVITA HEALTHCARE PARTNERS, INC. and
TOTAL RENAL CARE INC.

Defendants.

COMPLAINT AND JURY DEMAND

MYRNA HARRIS, individually and on behalf of all others similarly situated as part of a collective pursuant to the FLSA and as a class pursuant to Fed. R. Civ. P. 23, by and through her counsel, for her Complaint against Defendants DAVITA HEALTHCARE PARTNERS, INC. and TOTAL RENAL CARE INC. (hereinafter referred to as “Defendants”) hereby state and allege as follows:

PRELIMINARY ALLEGATIONS

1. Defendants are a Fortune 500 Company that provides a variety of health care services to patients throughout the United States and abroad. Defendants specialize in dialysis services for patients with chronic kidney failure and end stage renal disease.
2. Plaintiff and those similarly situated are non-exempt hourly employees of Defendants. Plaintiff and those similarly situated are all located within a geographic area

designated and defined by Defendants as encompassing the states of Montana, Kansas, Missouri and parts of Wyoming, Utah, Colorado, Nebraska, Oklahoma, Iowa, Illinois, Arkansas, and Texas, and are collectively referred to by Defendants as “Apex.”

3. Plaintiff and those similarly situated in the “Apex” zone are subject to the same illegal policy and practice of failing to pay workers for all time worked and failing to pay overtime wages. That policy and practice is based, in part, on direct patient care hours per treatment and the calculation of direct patient care hours for each facility established by corporate DaVita that reduces Defendants’ patient to staff ratios and require Plaintiff and those similarly situated to work more hours for which they are not properly compensated.

4. Plaintiff and those similarly situated were/are not properly paid for all work performed for the benefit of the employer.

5. Plaintiff and those similarly situated were/are not properly paid for overtime, time and a half, for over forty (40) hours in a workweek.

6. Plaintiff and those similarly situated were/are not properly paid for other work-related duties which occurred outside of their scheduled shift hours and/or on weekends. Defendants failed to change Plaintiff’s, and those similarly situated, time records to reflect the additional time worked on behalf of the employer even when Plaintiff and those similarly situated requested that their time records be corrected by management.

7. Defendants failed to properly maintain accurate daily records of all hours worked by Plaintiff and those similarly situated as required by federal law because Defendants are not properly recording all hours worked, including overtime.

This cause of action is brought as a collective action pursuant to federal law to recover from Defendants unpaid wages, overtime compensation, a declaratory judgment, liquidated damages, compensatory damages, punitive damages, costs and attorneys' fees and pre- and post-judgment interest associated with the bringing of this action, plus any additional relief that is just and proper for Plaintiff and those similarly situated under federal law.

JURISDICTION AND VENUE

8. Plaintiff and those similarly situated as part of a collective pursuant to the FLSA and as a class pursuant to Fed. R. Civ. P. 23 incorporate herein by this reference the allegations contained in this Complaint as if set forth *verbatim*.

9. The FLSA authorizes court actions by private parties to recover damages for violation of the FLSA's wage and hour provisions. Jurisdiction over Plaintiff's, and those similarly situated, FLSA claims are based upon 29 U.S.C. § 216(b) and 28 U.S.C. § 1331.

10. Subject Matter jurisdiction is conferred on this Court by Title 28 U.S.C. §1337 and by Title 29 U.S.C. § 216(b). At all times pertinent to this Complaint, Defendants were/are an enterprise engaged in interstate commerce or in the production of goods for consumers as defined § 3(r) and 3(s) of the FLSA, 29 U.S.C. §§ 203(r) and 203(s). The annual gross sales volume of the Defendant was in excess of \$500,000 per annum.

11. Alternatively, Plaintiff and those similarly situated worked in interstate commerce so as to fall within the protections of the FLSA.

12. This Court also has jurisdiction over Plaintiff MYRNA HARRIS'S claims for violations of the Colorado Wage Act, and breach of contract claims pursuant to 28 U.S.C. § 1367 because the State claims are so related to the FLSA claims that they form part of the same case or controversy and arise out of the common nucleus of operative facts.

13. Venue is proper in the District of Colorado pursuant to 28 U.S.C. § 1391(a).

COVERAGE PURUSANT TO THE FAIR LABOR STANDARDS ACT

14. Plaintiff and those similarly situated as part of a collective pursuant to the FLSA and as a class pursuant to Fed. R. Civ. P. 23, incorporate herein by this reference the allegations contained in this Complaint as if set forth *verbatim*.

15. At all times material hereto, Plaintiff and those similarly situated were “employees” of Defendants within the meaning of FLSA because they were individuals employed by an employer.

16. At all times material hereto, Plaintiff MYRNA HARRIS, and those similarly situated were hourly employees eligible for overtime pay.

17. At all times material hereto, Defendants were an “employer” within the meaning of FLSA because Defendants acted directly or indirectly in the interest of the employer in relation to an employee. 29 U.S.C. § 203(d). See *Koellhoffer v. Plotke-Giordani*, 858 F. Supp. 2d 1181, 1189 (D. Colo. 2012).

18. The FLSA “defines the verb ‘employ’ expansively to mean ‘suffer or permit to work.’” *Nationwide Mut. Ins. Co. v. Darden*, 503 U.S. 318, 326 (1992) (quoting 29 U.S.C. § 203(g)). “An entity ‘suffers or permits’ an individual to work if, as a matter of

'economic reality', the entity functions as the individual's employer." *Goldberg v. Whitaker House Coop., Inc.*, 366 U.S. 28, 33 (1961).

19. At all times material hereto, Defendants were/are an employer because Defendants had the ability to do the following with respect to Plaintiff and those similarly situated: hire and fire, supervise work schedules and conditions of employment, determined rates and method of payment and were obligated under the law to maintain employment records.

20. Also, at all times material hereto, Defendants were/are an employer because Defendants held exclusive operational control over Plaintiff and those similarly situated, were solely responsible for the day-to-day operations *and* had direct responsibility for the supervision of Plaintiff and those similarly situated.

21. At all times material hereto, Defendants employed two (2) or more employees.

22. At all times material hereto, Defendants were, and continue to be an "enterprise engaged in commerce" within the meaning of FLSA.

23. The FLSA defines an enterprise engaged in commerce or in the production of goods for commerce as one that "(a)(i) has employees engaged in commerce or in the production of goods for commerce, or that has employees handling, selling, or otherwise working on goods or materials that have been moved in or produced for commerce by any person; *and* (ii) is an enterprise whose annual gross volume of sales made or business done is not less than \$500,000...." 29 U.S.C. § 203(s)(1).

24. At all times material hereto, Defendants were, and continue to be, an “enterprise engaged in commerce” within the meaning of FLSA.

25. At all times material hereto, Defendants gross annual revenue was in excess of \$500,000 per annum during the relevant time periods.

26. At all times material hereto, Plaintiff and those similarly situated were “engaged in commerce” and subject to individual coverage of the FLSA.

27. Likewise, section 13 of the FLSA, 29 U.S.C. § 213, exempts certain categories of employees from overtime pay obligations. Because none of the FLSA exemptions apply to Plaintiff and those similarly situated, at all times material hereto, Plaintiff and those similarly situated were/are non-exempt.

PARTIES

28. Plaintiff and those similarly situated as part of a collective pursuant to the FLSA and as a class pursuant to Fed. R. Civ. P. 23 incorporate herein by this reference the allegations contained in this Complaint as if set forth *verbatim*.

29. At all times pertinent hereto, individual Plaintiff MYRNA HARRIS resided in the State of Colorado with a residential address in Colorado Springs, CO 80928.

30. At all times material hereto, individual Plaintiff MYRNA HARRIS worked as a non-exempt hourly employee for Defendants as an Administrative Assistant.

31. At all times material hereto, Plaintiff and all similarly-situated employees were performing their duties for the benefit of and on behalf of Defendants.

32. Defendants should be in possession of the time entries and wage records for Plaintiff, individually and collectively, for each and every workweek.

33. Upon information and belief, Defendant DAVITA HEALTHCARE PARTNERS is a Colorado incorporated company organized under the laws of Colorado doing business at 2000 16th Street Denver, CO 80202.

34. Upon information and belief, Defendants TOTAL RENAL CARE, INC. is a Colorado incorporated company organized under the laws of Colorado doing business at 2000 16th Street Denver, CO 80202.

35. Defendants are/were employers for the purposes of the FLSA, and are the proper Defendants/employers for Plaintiff and other similarly situated, non-exempt workers of Defendants.

COLLECTIVE ALLEGATIONS

36. Plaintiff and those similarly situated as part of a collective pursuant to the FLSA and as a class pursuant to Fed. R. Civ. P. 23 incorporate herein by this reference the allegations contained in this Complaint as if set forth *verbatim*.

37. Plaintiff brings her First Claim for Relief, the FLSA claim, as an “opt-in” collective action pursuant to 29 U.S.C. § 216(b).

38. The FLSA claims may be pursued by those who opt-in to this case, pursuant to 29 U.S.C. § 216(b).

39. Plaintiff, individually and on behalf of other similarly-situated employees (hereinafter also referred to as Opt-in Plaintiffs) seeks relief on a collective basis challenging, among other FLSA violations, Defendants’ practice of failing to accurately record all hours worked and failing to pay for all hours worked, including overtime compensation. The number and identity of other Opt-in Plaintiffs will be determined

from the records of Defendants, and potential members may easily and quickly be notified of the pendency of this action.

CLASS ALLEGATIONS

40. Plaintiff and those similarly situated as part of a collective pursuant to the FLSA and as a class pursuant to Fed. R. Civ. P. 23 incorporate herein by this reference the allegations contained in this Complaint as if set forth *verbatim*.

41. In addition to the claims pursuant to the FLSA, Plaintiff brings a Colorado Wage Act claim and a breach of contract claim as a collective action pursuant to Colo. R. Civ. P. 23 and/or Fed. R. Civ. 23, on behalf of herself and as representative of the class who worked for the Defendants in Colorado at any time in the last three years who were not paid for all of the time they performed work-related tasks, including overtime.

42. Plaintiff and class members satisfy the numerosity, commonality, typicality, adequacy, and superiority requirements of a class action.

43. Plaintiff and class members satisfy the numerosity standards; as a result, joinder of all class members in a single action is impracticable.

44. There are questions of fact and law common to the Plaintiff and class members that predominate over any questions affecting only individual persons, and a class action is superior with respect to considerations of consistency, economy, efficiency, fairness, and equity, to other available methods for the fair and efficient adjudication of the federal law claims.

45. Plaintiff's claims are typical of those of the class in that the class members have been/are employed by Defendants as non-exempt employees and were subject to the same or similar unlawful withholding of pay of Plaintiff.

46. A class action is the appropriate method for the fair and efficient adjudication of this controversy. Defendants have acted or refused to act on grounds generally applicable to the Plaintiff and class members. The presentation of separate actions by individual class members could create a risk of inconsistent and varying adjudications, establish incompatible standards of conduct for Defendants, and/or substantially impair or impede the ability of class members to protect their interests.

47. Plaintiff is an adequate representative of the class because she is a member of the class and her interests do not conflict with the interests of the class members she seeks to represent. The interests of the members of the class will be fairly and adequately protected by Plaintiff and her undersigned counsel, who have experience prosecuting complex wage and hour, employment, and/or other complex civil litigation.

48. Maintenance of this action as a class action is a fair and efficient method for the adjudication of this controversy.

49. It would be impracticable and undesirable for each class member who suffered harm to bring a separate action. In addition, the maintenance of separate actions would place a substantial and unnecessary burden on the courts and could result in inconsistent adjudications, while a single class action can determine, with judicial economy, the rights of all class members.

FIRST CLAIM FOR RELIEF
Violation of the Fair Labor Standards Act of 1938 and
Failure to Maintain Records
(ALL COLLECTIVE MEMBERS)

50. Plaintiff and those similarly situated as part of a collective pursuant to the FLSA and as a class pursuant to Fed. R. Civ. P. 23 incorporate herein by this reference the allegations contained in this Complaint as if set forth *verbatim*.

51. At all times material herein, Opt-in Plaintiffs have been entitled to the rights, protections, and benefits provided under the FLSA, 29 U.S.C. §§ 201 *et seq.*

52. The FLSA regulates, among other things, payment of overtime pay by employers such as the Defendants.

53. Defendants were, and are, subject to the recordkeeping and overtime pay requirements of the FLSA because they are an enterprise engaged in commerce and its employees are engaged in commerce.

54. Defendants violated the FLSA by failing to pay Opt-in Plaintiffs for all of their time worked, including overtime. In the course of perpetrating these unlawful practices, Defendants have also willfully failed to keep accurate records of all hours worked by employees. Defendants have also willfully failed to provide paystubs to their employees and/or documentation of hours worked and monies paid to their employees.

55. Section 13 of the FLSA, 29 U.S.C. § 213, exempts certain categories of employees from overtime pay obligations. None of the FLSA exemptions apply to Opt-in Plaintiffs. Accordingly, Opt-in Plaintiffs must be paid overtime pay in accordance with the FLSA.

56. Opt-in Plaintiffs were/are not properly paid for other work-related duties which occurred outside of their scheduled shift hours and/or on weekends. Defendants

failed to change Opt-in Plaintiffs' time records to reflect the additional time worked on behalf of the employer even when Opt-in Plaintiffs requested that their time records be corrected by management.

57. Defendants failed to properly maintain accurate daily records of all hours worked by Opt-in Plaintiffs as required by federal law because Defendants are not properly recording all hours worked, including overtime.

58. Opt-in Plaintiffs are victims of a uniform compensation policy practice. This uniform policy and practice is in violation of the FLSA.

59. Opt-in Plaintiffs are entitled to damages equal to the unpaid wages and mandated overtime premium pay within the three years preceding the filing of this Complaint because Defendants acted willfully and knew, or showed reckless disregard of whether, its conduct was prohibited by the FLSA.

60. As a result of the aforesaid willful violations of the FLSA overtime provisions, overtime compensation has been unlawfully withheld by Defendants from Opt-in Plaintiffs for which Defendants are liable pursuant to 29 U.S.C. § 216(b), together with an additional equal amount as liquidated damages, pre- and post-judgment interest, reasonable attorneys' fees, and costs of this action.

SECOND CLAIM FOR RELIEF
Violation of the Fair Labor Standards Act of 1938 and
Failure to Maintain Records
(PLAINTIFF, INDIVIDUALLY)

61. Plaintiff and those similarly situated as part of a collective pursuant to the FLSA and as a class pursuant to Fed. R. Civ. P. 23 incorporate herein by this reference the allegations contained in this Complaint as if set forth *verbatim*.

62. At all times material herein, Plaintiff, individually, is entitled to the rights, protections, and benefits provided under the FLSA, 29 U.S.C. §§ 201 *et seq.*

63. The FLSA regulates, among other things, payment of overtime pay by employers such as the Defendants.

64. Defendants were, and are, subject to the recordkeeping and overtime pay requirements of the FLSA because they are an enterprise engaged in commerce and its employees are engaged in commerce.

65. Defendants violated the FLSA by failing to pay Plaintiff for all of her time worked, including overtime.

66. In the course of perpetrating these unlawful practices, Defendants have also willfully failed to keep accurate records of all hours worked by employees. Defendants have also willfully failed to provide paystubs to their employees and/or documentation of hours worked and monies paid to their employees.

67. Section 13 of the FLSA, 29 U.S.C. § 213, exempts certain categories of employees from overtime pay obligations. None of the FLSA exemptions apply to Opt-in Plaintiffs. Accordingly, Opt-in Plaintiffs must be paid overtime pay in accordance with the FLSA.

68. Plaintiff was not properly paid for other work-related duties which occurred outside of her scheduled shift hours and/or on weekends. Defendants failed to change Plaintiff's time records to reflect the additional time worked on behalf of the employer.

69. Defendants failed to properly maintain accurate daily records of all hours worked by Plaintiff as required by federal law because Defendants are not properly recording all hours worked, including overtime.

70. Plaintiff is a victim of a uniform compensation policy practice. This uniform policy and practice, in violation of the FLSA.

71. Plaintiff is entitled to damages equal to the unpaid wages and mandated overtime premium pay within the three years preceding the filing of this Complaint because Defendants acted willfully and knew, or showed reckless disregard of whether, its conduct was prohibited by the FLSA.

72. As a result of the aforesaid willful violations of the FLSA overtime provisions, overtime compensation has been unlawfully withheld by Defendants from Plaintiff for which Defendants are liable pursuant to 29 U.S.C. § 216(b), together with an additional equal amount as liquidated damages, pre- and post-judgment interest, reasonable attorneys' fees, and costs of this action.

THIRD CLAIM FOR RELIEF
Violation of the Colorado Wage and Hour Laws and
Failure to Maintain Records
(PLAINTIFF, INDIVIDUALLY)

73. Plaintiff and those similarly situated as part of a collective pursuant to the FLSA and as a class pursuant to Fed. R. Civ. P. 23 incorporate herein by this reference the allegations contained in this Complaint as if set forth *verbatim*.

74. Defendants violated the Colorado Wage and hour laws, C.R.S. §§ 8-6-101 *et seq.*

75. Defendants are required under Colorado law to pay Plaintiff individually for her time that she worked for the benefit of Defendants. 7 COLO. CODE REGS. § 1103-1:2; 7 COLO. CODE REGS. § 1103-1:7.

76. Defendants are required under Colorado law to pay Plaintiff individually for unpaid wages and overtime work as well as unpaid work prior to, at the conclusion of, and on weekends. 7 COLO. CODE REGS. § 1103-1:4.

77. Defendants are required under Colorado law to maintain accurate daily records of all hours worked by its employees including Plaintiff. 7 COLO. CODE REGS. § 1103-1:2.

78. Defendants are required under Colorado law to provide Plaintiff monthly documentation detailing hours paid. C.R.S. §§ 8-4-103(4).

79. Because Defendants have not paid Plaintiff individually for all hours worked, including overtime wages and failed to properly maintain records, Plaintiff has been individually damaged in an amount to be determined pursuant to Colorado wage and hour laws.

FOURTH CLAIM FOR RELIEF
Breach of Contract
(PLAINTIFF, INDIVIDUALLY)

80. Plaintiff and those similarly situated as part of a collective pursuant to the FLSA and as a class pursuant to Fed. R. Civ. P. 23 incorporate herein by this reference the allegations.

81. Throughout Plaintiff's employment, Defendants have promulgated written and oral policies and procedures and a Corporate Integrity Agreement.

82. These policies and procedures were distributed to Plaintiff.

83. These policies and procedures constitute a contractual commitment to Plaintiff.

84. Plaintiff accepted Defendants' policies and procedures, and in return continued to work for Defendants.

85. Defendants breached their contractual commitment to Plaintiff by violating Defendants' policies and procedures regarding pay; therefore Defendants breached the contract.

86. Defendants never effectively disclaimed their contractual obligations to Plaintiff.

87. As a direct and proximate result of Defendants' breach of contract, Plaintiff has suffered and will suffer damages, including non-economic damages.

WHEREFORE, Plaintiff and those similarly situated as part of a collective pursuant to the FLSA and as a class pursuant to Fed. R. Civ. P. 23 demand judgment against Defendants, for the payment of compensation for which they have not been properly paid, liquidated damages, reasonable attorney's fees and costs, prejudgment interest, and for all other appropriate relief requested herein and available pursuant to federal law.

JURY DEMAND

Plaintiff and those similarly situated as part of a collective pursuant to the FLSA and as a class pursuant to Fed. R. Civ. P. 23 requests a trial by jury on all issues so triable.

DATED: November 16, 2017

Respectfully submitted,

RAMOS LAW

/s/ Colleen T. Calandra
Colleen T. Calandra

/s/ Madison Fiedler Carlson
Madison Fiedler Carlson

/s/ Darren Natvig
Darren Natvig

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Wheat Ridge, CO 80215
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Wilcox Law Firm, LLC

/s/ Ronald L. Wilcox
Ronald L. Wilcox
383 Corona Street, #401
Denver, CO 80218
Telephone: (303) 594-6720
Email: ron@wilcox.legal

ATTORNEYS FOR PLAINTIFFS

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____ .

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 _____ .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

Print

Save As...

Reset

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

<p>I. (a) PLAINTIFFS MYRNA HARRIS, individually and on behalf of all others similarly situated</p> <p>(b) County of Residence of First Listed Plaintiff <u>El Paso</u> <i>(EXCEPT IN U.S. PLAINTIFF CASES)</i></p> <p>(c) Attorneys <i>(Firm Name, Address, and Telephone Number)</i> Colleen T. Calandra, Esq., Ramos Law LLC, 3000 Youngfield Street, #200, Wheat Ridge, CO 80215 (303) 733-653</p>	<p style="text-align: center;">DEFENDANTS</p> <p style="text-align: center;">DAVITA HEALTHCARE PARTNERS, INC. and TOTAL RENAL CARE INC. County of Residence of First Listed Defendant _____ <i>(IN U.S. PLAINTIFF CASES ONLY)</i></p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.</p> <p>Attorneys <i>(If Known)</i></p>
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<p>II. BASIS OF JURISDICTION <i>(Place an "X" in One Box Only)</i></p> <p><input type="checkbox"/> 1 U.S. Government Plaintiff <input checked="" type="checkbox"/> Federal Question <i>(U.S. Government Not a Party)</i></p> <p><input type="checkbox"/> 2 U.S. Government Defendant <input type="checkbox"/> 4 Diversity <i>(Indicate Citizenship of Parties in Item III)</i></p>	<p>III. CITIZENSHIP OF PRINCIPAL PARTIES <i>(Place an "X" in One Box for Plaintiff and One Box for Defendant)</i> <i>(For Diversity Cases Only)</i></p> <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 25%;"></td> <td style="width: 10%; text-align: center;">PTF</td> <td style="width: 10%; text-align: center;">DEF</td> <td style="width: 45%;"></td> <td style="width: 10%; text-align: center;">PTF</td> <td style="width: 10%; text-align: center;">DEF</td> </tr> <tr> <td>Citizen of This State</td> <td style="text-align: center;"><input checked="" type="checkbox"/> 1</td> <td style="text-align: center;">1</td> <td>Incorporated or Principal Place of Business In This State</td> <td style="text-align: center;">4</td> <td style="text-align: center;"><input checked="" type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;">2</td> <td style="text-align: center;">2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td style="text-align: center;">5</td> <td style="text-align: center;">5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;">3</td> <td style="text-align: center;">3</td> <td>Foreign Nation</td> <td style="text-align: center;">6</td> <td style="text-align: center;">6</td> </tr> </table>		PTF	DEF		PTF	DEF	Citizen of This State	<input checked="" type="checkbox"/> 1	1	Incorporated or Principal Place of Business In This State	4	<input checked="" type="checkbox"/> 4	Citizen of Another State	2	2	Incorporated and Principal Place of Business In Another State	5	5	Citizen or Subject of a Foreign Country	3	3	Foreign Nation	6	6
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Citizen of Another State	2	2	Incorporated and Principal Place of Business In Another State	5	5																				
Citizen or Subject of a Foreign Country	3	3	Foreign Nation	6	6																				

IV. NATURE OF SUIT *(Place an "X" in One Box Only)* [Click here for: Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<p>PERSONAL INJURY</p> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<p>PERSONAL INJURY</p> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/ Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157
			PROPERTY RIGHTS	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/ Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
			LABOR	
			<input checked="" type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act	
			SOCIAL SECURITY	
			<input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	
			FEDERAL TAX SUITS	
			<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS		
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<p>Habeas Corpus:</p> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty		
		<p>Other:</p> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement		
			IMMIGRATION	
			<input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	

V. ORIGIN *(Place an "X" in One Box Only)*

Original Proceeding
 2 Removed from State Court
 3 Remanded from Appellate Court
 4 Reinstated or Reopened
 5 Transferred from Another District *(specify)*
 6 Multidistrict Litigation - Transfer
 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing *(Do not cite jurisdictional statutes unless diversity):*
U.S. C. §201 et seq.

Brief description of cause: AP Docket Failure to Pay Wages and Overtime

VII. REQUESTED IN COMPLAINT:
 CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.
DEMAND \$ _____
CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY *(See instructions):*

JUDGE Hon. Marcia S. Kreiger DOCKET NUMBER 15cv01964

DATE 11/15/17 SIGNATURE OF ATTORNEY OF RECORD s/Colleen T. Calandra

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

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INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Davita Healthcare Partners Facing Seven Lawsuits Over Unpaid OT Claims](#)
